

August 1, 2002

INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE GABRIEL W. GORENSTEIN

Matters before Judge Gorenstein shall be conducted in accordance with the following rules unless otherwise ordered.

1. Communications with Chambers

A. Letters. Letters to the Court are permitted and should be addressed to: 40 Centre Street, New York, NY 10007. Copies must be simultaneously delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court.

B. Telephone Calls. Except as provided in Paragraph 1(D) below, telephone calls to chambers are permitted only in emergency situations.

C. Faxes. Letters to chambers sent by facsimile telecopier are permitted only if copies are also simultaneously faxed or delivered to all counsel. No document longer than 10 pages may be faxed without prior authorization. Do not follow with a hard copy. The fax number is (212) 805-4268.

D. Docketing, Scheduling, and Calendar Matters. For docketing, scheduling and calendar matters, call Sylvia Gonzalez, the Deputy Clerk, at (212) 805-4260 between 9:00 A.M. and 5:00 P.M.

E. Requests for Extensions of Time or Adjournments. All requests for extensions of Court-imposed deadlines must state (1) the original date or dates, (2) the number of previous requests for extensions (and whether the previous requests were granted or denied), (3) the reason for the extension, and (4) whether the adversary consents and, if not, the reasons given by the adversary for refusing to consent.

A request for an adjournment of a court appearance (such as a conference or oral argument date) shall be made, absent an emergency, at least two business days prior to the scheduled appearance. Prior to making such a request, the party so requesting should contact the Deputy Clerk, Sylvia Gonzalez ((212) 805-4260), to determine alternative dates for which the Court is available for a rescheduled court appearance. The party must then make a written application for an adjournment, with copies to all other parties, that includes (1) a statement as to all other parties' positions on the change in date and (2) a proposal for an alternative date for the conference (as provided by the Deputy Clerk) for which all parties are available. The case is not adjourned unless counsel are informed by the Deputy Clerk that the written application has been granted.

2. Motions

A. Pre-Motion Conferences in Civil Cases. Pre-motion conferences are required in all cases where the proposed motion is returnable before Judge Gorenstein, as described below.

Discovery Motions. No discovery motion (that is, a motion arising under Rules 26 through 37 inclusive of the Federal Rules of Civil Procedure) shall be heard unless counsel for the moving party has first conferred in good faith by telephone or in person with all other relevant parties in an effort to resolve the dispute that is being raised with the Court. If the conference with opposing counsel has not

resolved the issue or issues raised, the moving party must inform opposing counsel during the conference that the moving party intends to seek relief from the Court on such issue or issues. The moving party may thereafter request a conference with the Court. See Local Civil Rule 37.2. To request a conference with the Court, the moving party shall submit a letter (normally not more than five pages) setting forth the basis of the discovery dispute and the need for the anticipated motion. The letter must certify that the required conference took place between counsel and must also state the date of such conference. The requirement that the party describe the dispute for the benefit of the Court may not be satisfied by attaching copies of correspondence between counsel. The party opposing the requested relief should submit a letter to the Court in response as soon as practicable.

Motions other than Discovery Motions. To arrange a pre-motion conference for non-discovery matters, the moving party shall submit a letter setting forth briefly (normally no more than one page) the basis for the anticipated motion.

B. Courtesy Copies. Courtesy copies of all motion papers, marked as such, must be submitted to Chambers (by mail or hand delivery to the mailroom at 40 Centre Street) at the same time they are served on opposing counsel.

C. Memoranda of Law. A memorandum of law must accompany all motions and oppositions thereto. See Local Civil Rule 7.1. It is strongly recommended that memoranda of law consist of fewer than 25 pages (10 pages for reply memoranda) and that footnotes be kept to a minimum. Memoranda of more than 10 pages shall contain a table of contents. A memorandum of law shall not incorporate by reference any accompanying declarations or affidavits. Instead, the memorandum must contain a fact section that sets forth all facts relevant to the motion and, for each factual statement, contains citations to the declarations, affidavits or other evidence in the record.

D. Filing of Motion Papers. Motion papers shall be filed with the Clerk's Office promptly following service on the parties. Courtesy copies must be sent to Chambers in accordance with 2(B) above. When the motion is fully submitted, the party making the initial motion shall send a letter to Chambers informing the court of such with copies to all other parties.

E. Oral Argument on Motions. Parties may request oral argument by letter. If the Court determines that argument will be heard, it will so advise counsel.

G. Summary Judgment Motions in Pro Se Cases. Where a party seeks summary judgment against a pro se litigant, that party is reminded to comply with the notice requirements of Local Civil Rule 56.2.

3. Pretrial Procedures

Note: The following additional procedures apply in those cases where the parties have consented under 28 U.S.C. § 636(c) to have all proceedings, including trial, before Judge Gorenstein.

A. Pretrial Disclosure. The parties are reminded of their obligations to make certain disclosures regarding expert testimony pursuant to Fed. R. Civ. P. 26(a)(2) and to make disclosure regarding evidence that may be presented at trial pursuant to Fed. R. Civ. P. 26(a)(3). Failure to comply with these requirements may result in preclusion or other sanctions.

B. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days from the date for the completion of discovery in a civil case, the parties shall submit to the Court for its approval a joint pretrial order, which shall include the following:

- i. The full caption of the action.
- ii. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.
- iii. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount.
- iv. A brief summary by each party of the claims and defenses that party has asserted that remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted that are not to be tried.
- v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.
- vi. Any stipulations or agreed statements of fact or law that have been agreed to by all parties.
- vii. A statement by each party as to the witnesses whose testimony is to be offered in its case, indicating whether such witnesses will testify in person or by deposition.
- viii. A designation by each party of deposition testimony to be offered in its case, with any cross-designations and objections by any other party.
- ix. A list by each party of exhibits to be offered in its case, with one asterisk indicating exhibits to which no party objects as to authenticity, and two asterisks indicating exhibits to which no party objects on any ground. Each exhibit shall be pre-marked (plaintiff to use numbers, defendant to use letters).

C. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, each party shall file -- 15 days before the date of commencement of trial if such a date has been fixed or 30 days after the submission of the final pretrial order if no trial date has been fixed, whichever is earlier -- the following:

- i. In jury cases, all parties must prepare jointly a list of (1) voir dire questions to be asked of prospective jurors on which they agree; (2) requests to charge on which they agree; and (3) a proposed verdict sheet on which they agree. If any party objects to another party's requested voir dire questions, requests to charge or proposed verdict sheet, that party should (1) set forth the grounds for that objection and (2) propose an alternative. Objections to proposed voir dire questions or requests to charge must include citation to authority. The joint list of voir dire questions, requests to charge and proposed verdict sheet should be presented in one document, and the parties' objections and alternative proposals should be presented in another. Each party must also file a Trial Memorandum of Law addressed to each issue of law that the party expects to arise at or before trial. If the voir dire questions, requests to charge

and/or verdict sheets are prepared on a computer, electronic copies must also be submitted on disk or via e-mail, preferably in WordPerfect format. Counsel should contact Ms. Gonzalez to determine how to submit materials by e-mail.

ii. In nonjury cases, the parties are required to submit proposed findings of fact and conclusions of law. The parties must also submit trial memoranda of law that identify the issues, summarize facts and applicable law, and address any evidentiary issues. If prepared on a computer, these materials should also be submitted on disk or via e-mail, preferably in WordPerfect format. Counsel should contact Ms. Gonzalez to determine how to submit materials by e-mail.

D. Submissions to the Court Prior to Trial in Civil Cases. At or before the time the materials set forth in paragraph 3.C above are filed, the parties shall deliver to the Court (with a copy to their adversary): (1) a copy of each of the party's pre-marked exhibits, see paragraph 3.B.ix above, and (2) a copy of any deposition testimony designated in paragraph 3.B.vii above.

E. Settlement Prior to Trial. The attention of counsel is directed to Local Civil Rule 47.1, which provides that the Court may assess the parties or counsel with the cost of one day's attendance of the jurors if a case is settled after the jury has been summoned or during trial. A civil jury is considered summoned for a trial as of noon of the business day prior to the designated date of the trial.

F. Witnesses at Trial. When a party's case commences, that party is expected to have witnesses available to fill the trial day, which runs from 9:30 a.m. to 5 p.m. with a one hour lunch break. Counsel are warned that if they do not have a witness available to testify, the Court may deem the party to have rested. Any requests to schedule a witness out of order shall be made by letter application (1) prior to trial and (2) as soon as counsel is aware of the limited availability of that witness. Untimely applications will be denied.